

Congress of the United States
Washington, DC 20515

October 7, 2019

VIA U.S. AND ELECTRONIC MAIL

The Honorable Mark T. Esper
Secretary of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Secretary Esper:

Pursuant to the House of Representatives' impeachment inquiry, we are hereby transmitting a subpoena that compels you to produce the documents set forth in the accompanying schedule by **October 15, 2019**.

This subpoena is being issued by the Permanent Select Committee on Intelligence under the Rules of the House of Representatives in exercise of its oversight and legislative jurisdiction and after consultation with the Committee on Foreign Affairs and the Committee on Oversight and Reform. The subpoenaed documents shall be collected as part of the House's impeachment inquiry and shared among the Committees, as well as with the Committee on the Judiciary as appropriate.¹ Your failure or refusal to comply with the subpoena, including at the direction or behest of the President or the White House, shall constitute evidence of obstruction of the House's impeachment inquiry and may be used as an adverse inference against you and the President.

The Committees are investigating the extent to which President Trump jeopardized U.S. national security by pressing Ukraine to interfere with our 2020 election and by withholding military assistance provided by Congress to help Ukraine counter Russian aggression, as well as any efforts to cover up these matters.

In September 2018, Congress appropriated \$250 million to the Department of Defense for the Ukraine Security Assistance Initiative for fiscal year 2019.² In its Committee report authorizing the appropriation, the Senate Committee on Armed Services wrote:

The committee remains deeply concerned by the continuing aggression of Russia and Russian-led separatist forces in Ukraine. The committee welcomes the delivery of

¹ See Letter from Jerrold Nadler, Chairman, Committee on the Judiciary, to Adam B. Schiff, Chairman, Permanent Select Committee on Intelligence; Maxine Waters, Chairwoman, Committee on Financial Services; Elijah E. Cummings, Chairman, Committee on Oversight and Reform; and Eliot L. Engel, Chairman, Committee on Foreign Affairs (Aug. 22, 2019) (online at <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/FiveChairsLetter8.22.pdf>).

² Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245 at § 9013(2018).

Javelin Missiles and Javelin Command Launch Units to Ukraine, which sends a strong signal of the United States' commitment to the defense of allies and partners. The committee continues to emphasize the importance of providing security assistance and intelligence support, including defensive lethal assistance, to the Government of Ukraine to build its capacity to defend its sovereignty and territorial integrity.³

On February 28 and May 23, 2019, Under Secretary of Defense for Policy John C. Rood notified Congressional chairs that the Department of Defense intended to release large tranches of this military aid to Ukraine.⁴ The Congressional committees approved the defense assistance shortly after each notification. On June 18, 2019, the Defense Department announced that it was finalizing \$250 million in security cooperation funds to Ukraine.⁵

According to multiple press reports, at some point in July 2019, President Trump ordered Acting Chief of Staff and Office of Management and Budget (OMB) Director Mick Mulvaney to freeze the military aid to Ukraine, and Mr. Mulvaney reportedly conveyed the President's order "through the budget office to the Pentagon and the State Department, which were told only that the administration was looking at whether the spending was necessary."⁶

According to press reports, "Administration officials were instructed to tell lawmakers that the delays were part of an 'interagency process' but to give them no additional information."⁷ Officials at the Departments of State and Defense reportedly were "puzzled and alarmed" after learning about the White House's directive. Defense Department officials reportedly "tried to make a case to the White House that the Ukraine aid was effective and should not be looked at in the same manner as other aid," but "those arguments were ignored." State and Defense Department officials reportedly contacted Congress to inform them of the freeze imposed by the White House.⁸

³ Senate Committee on Armed Services, *Report to Authorize Appropriations for Fiscal Year 2019 for Military Activities of the Department of Defense and for Military Construction, to Prescribe Military Personnel Strengths for Such Fiscal Year, and for Other Purposes* (Sen. Rpt. 115-262) (June 5, 2018) (online at www.govinfo.gov/content/pkg/CRPT-115srpt262/html/CRPT-115srpt262.htm).

⁴ Letter from John C. Rood, Under Secretary for Policy, Department of Defense, to Congressional Chairmen (May 23, 2019) (online at <https://assets.documentcloud.org/documents/6430088/Pentagon-Letter-On-Ukraine-Aid.pdf>).

⁵ Department of Defense, *Press Release: DOD Announces \$250M to Ukraine* (June 18, 2019) (online at www.defense.gov/Newsroom/Releases/Release/Article/1879340/dod-announces-250m-to-ukraine/).

⁶ *Trump Said to Have Frozen Aid to Ukraine Before Call with Its Leader*, New York Times (Sept. 23, 2019) (online at www.nytimes.com/2019/09/23/us/politics/trump-un-biden-ukraine.html).

⁷ *Trump Ordered Hold on Military Aid Days Before Calling Ukrainian President, Officials Say*, Washington Post (Sept. 23, 2019) (online at www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/d93a6ca-de38-11e9-8dc8-498eabc129a0_story.html).

⁸ *Trump Said to Have Frozen Aid to Ukraine Before Call with Its Leader*, New York Times (Sept. 23, 2019) (online at www.nytimes.com/2019/09/23/us/politics/trump-un-biden-ukraine.html).

On July 25, 2019, President Trump had a telephone call with President Volodymyr Zelensky of Ukraine. According to the record of the call that has now been made public, President Trump urged the Ukrainian President to launch an investigation into former Vice President Biden immediately after the Ukrainian President inquired about the status of the U.S. military assistance, including his desire to procure U.S.-manufactured Javelin missiles.⁹

According to the record, immediately after President Zelensky mentioned his desire to obtain Javelin missiles, President Trump stated, "I would like you to do us a favor though." He also stated, "I would like to have the Attorney General call you or your people and I would like you to get to the bottom of it." He also said:

There's a lot of talk about Biden's son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it... It sounds horrible to me.¹⁰

In August 2019, Senator Ron Johnson was informed by Gordon Sondland, the U.S. Ambassador to the European Union, that if Ukraine would "get to the bottom of what happened in 2016—if President Trump has that confidence, then he'll release the military spending." Senator Johnson stated: "At that suggestion, I winced." He also stated: "My reaction was: Oh, God. I don't want to see those two things combined."¹¹

As you are aware, the Impoundment Control Act of 1974 authorizes the President to withhold the obligation of funds only "(1) to provide for contingencies; (2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or (3) as specifically provided by law." The President is required to submit a special message to Congress with information about the proposed deferral of funds.¹²

On August 30, 2019, Chairman Adam Smith and Ranking Member Mac Thornberry of the House Committee on Armed Services wrote a letter to Mr. Mulvaney requesting information regarding why military assistance to Ukraine was being withheld and when it would be released. They wrote: "This funding is critical to the accomplishment of U.S. national security objectives in Europe."¹³

⁹ The White House, *Memorandum of Telephone Conversation* (July 25, 2019) (online at www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf).

¹⁰ *Id.*

¹¹ *Trump, in August Call with GOP Senator, Denied Official's Claim on Ukraine Aid*, Wall Street Journal (Oct. 4, 2019) (online at www.wsj.com/articles/trump-administration-used-potential-meeting-to-pressure-ukraine-on-biden-texts-indicate-11570205661).

¹² 2 U.S.C. § 684.

¹³ Letter from Chairman Adam Smith and Ranking Member Mac Thornberry, House Committee on Armed Services, to Mick Mulvaney, Director, Office of Management and Budget (Aug. 30, 2019).

On September 3, 2019, a bipartisan group of Senators—including Senators Rob Portman, Jeanne Shaheen, Dick Durbin, Richard Blumenthal, and Ron Johnson—wrote a letter requesting that OMB release the military assistance to Ukraine that the Trump Administration was withholding:

The funds designated for the Ukraine Security Assistance Initiative are vital to the long term viability of the Ukrainian military. It has helped Ukraine develop the independent military capabilities and skills necessary to fend off the Kremlin's continued onslaughts within its territory. In fact, Ukraine continues to fight daily on its eastern border against Russia-backed separatists in the provinces of Donetsk and Luhansk, and over 10,000 Ukrainian soldiers and civilians have lost their lives in this war. U.S.-funded security assistance has already helped turn the tide in this conflict, and it is necessary to ensure the protection of the sovereign territory of this young country, going forward.¹⁴

On September 5, 2019, Chairman Eliot L. Engel and Ranking Member Michael McCaul of the House Committee on Foreign Affairs wrote a letter to OMB urging the Trump Administration to lift its hold on security assistance funds to support Ukraine, writing: "These funds, which were appropriated by Congress as Foreign Military Financing and as part of the Ukraine Security Assistance Initiative and signed into law by the President, are essential to advancing U.S. national security interests."¹⁵

On September 9, 2019, the Committees on Intelligence, Foreign Affairs, and Oversight wrote to the White House requesting documents related to "the actual or potential suspension of security assistance to Ukraine."¹⁶ The White House never responded this request. However, two days later, on September 11, 2019, the White House released its hold on the military assistance to Ukraine.¹⁷

On September 24, 2019, Senate Majority Leader Mitch McConnell stated that, although he was "very actively involved in advocating the aid," he "was not given an explanation" about

¹⁴ Letter from Senators Rob Portman, Jeanne Shaheen, Dick Durbin, Richard Blumenthal, and Ron Johnson, to Mick Mulvaney, Director, Office of Management and Budget (Sept. 3, 2019) (online at www.portman.senate.gov/newsroom/press-releases/portman-shaheen-lead-bipartisan-ukraine-caucus-leadership-letter-urging).

¹⁵ Letter from Chairman Eliot L. Engel and Ranking Member Michael McCaul, House Committee on Foreign Affairs, to Mick Mulvaney, Director, and Russell Vought, Acting Director, Office of Management and Budget (Sept. 5, 2019).

¹⁶ Letter from Chairman Eliot L. Engel, House Committee on Foreign Affairs, Chairman Adam Schiff, House Permanent Select Committee on Intelligence, and Chairman Elijah E. Cummings, House Committee on Oversight and Reform, to Secretary Mike Pompeo, Department of State (Sept. 9, 2019) (online at https://foreignaffairs.house.gov/_cache/files/a/d/ad1e0561-2252-4f7c-97ad-f649db558c83/1F587BDDA9087BEDDEE8D45A8F92C370.test.ele-schiff-cummings-letter-to-sec-pompeo-on-ukraine-002-.pdf).

¹⁷ *Trump Administration Backs Off Hold on Ukraine Military Aid*, Politico (Sept. 12, 2019) (online at www.politico.com/story/2019/09/12/trump-administration-ukraine-military-aid-3825755).

why it was being withheld, even though he talked to the Secretary of Defense and the Secretary of State. He stated: "I have no idea what precipitated the delay."¹⁸

The enclosed subpoena demands documents that are necessary for the Committees to examine this sequence of these events and the reasons behind the White House's decision to withhold critical military assistance to Ukraine that was appropriated by Congress to counter Russian aggression.

Please contact staff for the Permanent Select Committee on Intelligence at (202) 225-7690 to arrange for the production of documents.

Sincerely,



Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence



Eliot L. Engel
Chairman
House Committee on Foreign Affairs



Elijah E. Cummings
Chairman
House Committee on Oversight and Reform

Enclosures

cc: The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable Michael McCaul, Ranking Member
House Committee on Foreign Affairs

The Honorable Jim Jordan, Ranking Member
House Committee on Oversight and Reform

¹⁸ McConnell: 'I Was Not Given an Explanation' for Ukraine Aid Delay, The Hill (Sept. 24, 2019) (online at <https://thehill.com/homenews/senate/462828-mcconnell-i-was-not-given-an-explanation-for-ukraine-aid-delay>).